

REMARKS / ARGUMENTS

In response to the Office action dated November 11, 2003 ("OA"), Applicants respectfully request that the Office enter the following amendments and consider the following remarks. Claims 1-10 remain pending in this application. By this amendment, Applicants amend claim 4. Authorization is hereby given to charge any fees (e.g., extension fees) associated with this response to Deposit Account No. 06-0916.

In the Office action, the Examiner: (i) affirmed his restriction requirement that the invention be restricted to either Group I (claims 1-10), as classified in class 709, subclass 237, or to Group II (claims 11-16), as classified in class 709, subclass 30; (ii) objected to the Information Disclosure Statement in that legible copies of the foreign patents and non-patent references were allegedly not provided; (iii) rejected claims 1-3 and 8-10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,587,837 to Spagna et al. ("Spagna") in view of Stevens, TCP/IP Illustrated, Volume 1 ("Stevens"); and (iv) rejected claims 4-7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,396,613 to Hollaar ("Hollaar") in view of U.S. Patent No. 5,604,487 to Fymier ("Fymier"). Applicants address each of the objections/rejections in turn below.

Election / Restriction

Applicants hereby affirm the provisional election, without traverse, agreed to by Ms. Linda Thayer in a telephone conference on November 12, 2003. In that conversation, Ms. Thayer made provisional election to prosecute the claims of Group I, i.e., claims 1-10. In accordance with this election, claims 11-16 are withdrawn without prejudice.

Information Disclosure Statement

The Examiner has stated that the Information Disclosure Statement filed June 12, 2003, fails to comply with 37 C.F.R. 1.98(a)(2) because legible copies of each of the cited references may not have not provided. Applicants hereby resubmit the references in question with a fifth Information Disclosure Statement. This Information Disclosure Statement provides the objected-to references from the June 12, 2003 IDS (re-listed on **pages 1 and 2** of the attached form PTO-1449) as electronic copies on the CD-ROM attached hereto; furthermore, **additional, new references** for the Examiner to consider are also listed on **page 1** of the form

PTO-1449, and are submitted as hardcopies herewith. Applicants respectfully request consideration of the references.

35 U.S.C. § 103(a) Rejections

Claims 1-3 and 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Spagna in view of Stevens. See OA, page 3 ¶ 2.

In the Office action, various characterizations of the claims and Spagna are made, including:

“the first computer system sending a first acknowledgement to the second computer system indicating that the content was successfully released to the user (Player Application builds an Order SC and transmits it to Clearinghouse, the Clearinghouse being art [sic, part] of the Electronic Digital Content Store; col. 22, lines 1-8; col. 14, lines 45-47) ... the second computing system sending a second acknowledgement to the first computing system (the Clearinghouse create a License and transmit it to the End-User; col. 22, lines 17-21); the first computer system receiving the second acknowledgement (col. 22, lines 22-24). Spagna inherently teaches the initiation and termination of an acknowledgement process that detects the second acknowledgement from the second computer system.”

[See OA, page 4, ¶ 2].

As an initial matter, Applicants respectfully object to the Examiner’s characterizations of the claims and Spagna as a whole, but particularly the statements quoted above. First, Applicants submit that Spagna does not teach or suggest at least the step of “sending the first acknowledgement from the first computer system to the second computer system, the first acknowledgement indicating that the content was successfully released to the user,” as recited by claim 1. The Examiner opines that this element is taught by Spagna at col. 22, lines 1-8, where it states that the “Player Application builds an Order SC and transmits it to Clearinghouse,” and appears to equate the sending of the Order SC with a “first acknowledgement.” The Order SC, however, is merely an order for services and cannot be a “first acknowledgement indicating that the content was successfully released to the user,” as is recited by claim 1.

Applicants further submit that Spagna does not teach or suggest the method of granting access to content as recited in claim 1. For example, claim 1 recites “execution of an acknowledgement monitoring process,” involving detecting a “second acknowledgement” and sending a “third acknowledgement,” as recited in steps (a) and (b) of claim 1. Here, the Examiner fails to identify with particularity how Spagna teaches “initiating execution of an acknowledgement-monitoring process,” or how the process can “detect a second acknowledgement,” as is also recited by claim 1. Applicants therefore submit that, by failing to specifically address at least these two elements, the Examiner has failed to make a *prima facie* showing of obviousness.

Stevens does not cure the deficiencies of Spagna nor teach or disclose all of the elements of claim 1.

Therefore, for at least these reasons, Applicants submit that neither Spagna, nor the combination of Spagna and Stevens, teaches or suggests the claimed invention as set forth in claim 1. Accordingly, Applicants request that the instant rejection with respect to claims 1-3 be withdrawn.

In the Office action, the Examiner purports to reject claims 8-10 in view of these same two references. However, in doing so, the Examiner states only that “[a]s per claim 10, Spagna discloses the claimed invention modified by Stevens. Furthermore it is inherent that the invention is embodied on a computer readable medium (RAM, system memory, ROM).” However, nowhere in the Office action does the Examiner state any basis for rejecting claim 8, from which claim 10 depends. Further, claim 8 does not contain the same limitations as claim 1, or any other claim previously discussed and therefore cannot be summarily rejected by the Examiner without a detailed basis. Applicants respectfully request that the Office provide a basis for rejecting claim 8, and the claims that depend therefrom, or withdraw this rejection. If the Examiner rejects claims 8-10, Applicants request another non-final opportunity to respond to the rejection.

Because no clear issue has been developed between the Examiner and Applicants with regard to at least claims 8-10 (see MPEP § 706.07), Applicants respectfully request that the subsequent Office action in this case not be made final.

Appln. No. 09/629,114
Amdt./Response dated May 20, 2004
Reply to Office action dated Nov. 21, 2003

PATENT
Customer No. 22,852
Attorney Docket No. 7451.0026-00
InterTrust Ref. No.: IT-24.1 (US)

Claims 4-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollaar in view of Fymier.

Applicants respectfully disagree with the Examiner's characterizations of claims 4-7, and the application of the Hollaar and Fymier references. In addition, Applicants object to the Examiner's taking of "Official Notice" regarding the advantages of resetting a timeout counter and the assertion that "modifying a definition of a predefined fault condition" is allegedly obvious. However, in the interest of expediting prosecution, Applicants have amended claim 4 to clarify that the predefined fault condition is modified to "a second definition such that the failure-recovery job sends the status signal when the second definition is exhibited." Applicants submit that claim 4, as amended, as well as claims 5-7 which depend from claim 4, are patentable over the cited art.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the instant application in view of this response, and the timely allowance of the pending claims. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Andrew B. Schwaab at (650) 849-6643.

Please grant any extensions of time required to enter this response and charge any additional required fees to deposit account 06-0916.

Respectfully submitted,

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